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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 604

ALBERT ADDESSI ET AL.,
PETITIONERS,

v.

SHELL OIL COMPANY,
RESPONDENT.

BRIEF OF RESPONDENT SHELL OIL COMPANY

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Question Presented.

IS AN IMPORTANT QUESTION OF FEDERAL PRACTICE PRESENTED BECAUSE THE COURT OF APPEALS REVERSED AND REMANDED A CASE WITH DIRECTIONS TO ENTER JUDGMENT FOR ONE PARTY WHERE THE PARTIES HAD STIPULATED ALL THE MATERIAL FACTS AND NEITHER THE DISTRICT COURT ON SUMMARY JUDGMENT NOR THE COURT OF APPEALS ON APPEAL FOUND ANY GENUINE ISSUE OF MATERIAL FACT ON THE SOLE ISSUE IN THE CASE?

Statement of the Case

A. *The Facts In Brief*

This is a diversity action brought in the district court for the District of Rhode Island by the Shell Oil Company for specific performance of an option contained in a Rhode Island contract to purchase real property.

On April 7, 1954 the Addessis leased the property in question to Shell and simultaneously (as stipulated by the parties), Shell leased it back to them.

Paragraph 9 of the lease gave Shell an option to purchase the property at a predetermined price

> "At any time during the original term of this lease or any extension thereof or any tenancy thereafter . . . which option Shell may exercise by notice to Lessors."

Paragraph 2(a) of the lease made it "subject to" an agreement also entered into simultaneously on April 7, 1954. The agreement gave the Addessis an option to terminate the lease on the following conditions

> —by giving Shell at least 180 days notice, and
> —by paying Shell a predetermined amount, and
> —by discharging the mortgage on the property.

Shell exercised its purchase option by notice on January 19, 1965.

The Addessis refused to convey. They pitch their refusal on a notice to Shell of November 12, 1964 that said in key part:

> "We . . . *do hereby give Shell Oil Company notice that we will terminate the lease on May 17, 1965.* . . .

". . . that we will discharge all balances due the holder of that certain mortgage . . . prior to the date of termination. . . .

". . . and that we will pay the sum due Shell Oil Company. . . ." (emphasis in original).

B. *What Took Place In The District Court*

The parties stipulated all the material facts—in the main, the genuineness of documents but also such other facts as tender by the Addessis on May 17, 1965, discharge of the mortgage by them on May 10, 1965, Shell's readiness to buy, etc.

Shell moved for summary judgment on the stipulation. On the law, it saw but one issue. Did Shell's option to purchase continue in existence after receipt of the Addessis' notice to terminate. Shell argued that it did.

The Addessis did not question that the case presented but this one issue. (Nor did they on appeal or do they in their petition.) But, of course, they argued against Shell on the law; and they also filed an affidavit.

The court denied Shell's motion.

The Addessis then moved for summary judgment on the stipulation. Shell still argued there was no fact issue and that on the law its position should prevail. It also filed an affidavit.

On argument of the motion, the court cleared up the grounds of its first decision.

"I based my decision, I think you will find, solely upon the language of the lease and the language of the agreement between the parties. I didn't consider any affidavit the defendants filed. . . .

"I quite agreed with you. I didn't see any ambiguity in either one of them."

(pp. 22-33 of appendix to Addessi brief in the Court of Appeals)

The court granted the Addessis' motion.

C. *What Took Place In The Court Of Appeals*

Shell appealed from the denial of its motion and from the granting of the Addessi motion.

The Court of Appeals decision speaks for itself. In short though, the court found

a) that the court below properly determined that no genuine issue of material fact existed, i.e. that the documents were clear and unambiguous and that parol evidence was inadmissible, but

b) contrary to the court below, by giving the documents a consistent and complete construction and in light of Rhode Island law, the lease did not terminate until May 27, 1965 (the date the Addessis themselves specified in their notice) so that Shell's exercise of its purchase option stood up, and

c) that there was no other issue of fact or law in the case.

The Court of Appeals reversed and remanded with directions to enter judgment for Shell.

Argument

The Court of Appeals could have done nothing else but remand with directions to enter judgment for plaintiff. The mere recital of what happened below shows this.

Both courts agreed there was no fact issue. Neither found an issue the parties overlooked. If they had, sum-

mary judgment could not have been granted. *Walling* v. *Richmond Screw Anchor Co., Inc.,* 154 F.2d 780 (2d Cir. 1946), *cert. den.* 328 U.S. 870 (1946). Nor did the Court of Appeals find a new legal issue and improperly preclude factual inquiry as to it by directing entry of judgment on remand. *Fountain* v. *Filson,* 336 U.S. 681 (1949).

But the Court of Appeals disagreed with the District Court on the law. Having so decided, it had to reverse. It likewise had to remand. On remand, it had three choices, two Pickwickian, one genuine.

1. Remand with directions to enter judgment for the Addessis. This though was no choice since the Court had found for Shell on the law.

2. Remand with directions for trial. This was no choice either. To have ordered trial of facts which neither it nor the District Court thought existed, would have been nonsense.

3. Remand with directions to enter judgment for Shell. This, the only rational choice, it did.

The point is obvious. So obvious, we believe, that this court has never seen fit to pass on it and, we submit, need not now.

The principles governing summary judgment control up the line. On motion, the District Court must decide whether there is a genuine issue of material fact, and if not, whether the moving party is entitled to judgment on the law. On appeal, the Court of Appeals must decide whether the District Court properly found there was no genuine issue and, if it properly did, whether it held correctly on the law.

In instances where (as here) no genuine issue of material fact exists

—The great weight of authority holds that the District Court may grant summary judgment for a non-moving party. 6 Moore's *Federal Practice,* 2d ed. §56.12, p. 2241.

This court mentioned that question but left it open in *Fountain* v. *Filson, supra.*

—The great weight of authority holds that where cross-motions are made, the District Court may grant summary judgment for one party or the other. 6 Moore, *op. cit.*, §56.13, p. 2247.

—As a matter of reason, the Court of Appeals may do likewise. 6 Moore, *op. cit.* (see sections cited and) §56.27 [2], p. 2977. After all, on precisely the same inquiry, the Court of Appeals can affirm a summary judgment. See, *Walling* v. *Richmond Screw Anchor Co., Inc., supra.*

So, at bottom, the Addessis just argue that the Court of Appeals should have found an issue of fact, i.e. an ambiguity to merit parol evidence. (They urged the opposite in that court, and prayed for affirmance.) They seem to say that because each party filed affidavits there must be an issue of fact. To state the argument exposes its poverty.

The Advisory Committee's Note to the 1963 amendment to subdivision (e) reaffirms the thrust and purpose of Rule 56.

> "The very mission of the summary judgment procedure is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial."

The amendment itself requires proof.

A moving party presents evidence to persuade the court that no triable issue exists. Typically, the opposing party presents evidence to persuade the court otherwise. Both usually argue the law. But—the mere fact that evidence is presented does not in itself either establish the absence or the presence of a triable issue of fact. The court must assess the proof to decide the point. The office

of proof is to help it do so, not to preclude it from doing so.

Three other points:

This case presents only the construction of documents stipulated as genuine. Such cases peculiarly lend themselves to summary judgment. See, *Associated Press et al* v. *United States,* 326 U.S. 1 (1944) where this court upheld a summary judgment in a far more complex documentary case.

Also, this case presents the parol evidence rule as applied to an integrated contract. Such cases too peculiarly lend themselves to summary judgment. 6 Moore *op. cit.,* §56.17 [43]; see (as but one example) *Simpson Brothers* v. *District of Columbia,* 179 F.2d 430 (C.A. D.C. 1949), *cert. den.* 338 U.S. 911 (1950).

The Addessis flail around to avoid the rule. They quote *Golden Gate Corporation* v. *Barrington College,* — R.I. —, 199 A.2d 586 (1964) but do not give its holding: that the parol evidence rule did not apply because the very issue was "had all the agreements been merged in an integrated document, or was it only a partially integrated document?" (p. 590) The Addessis have never argued that the contract documents were not complete. Understandably they do not mention the integration clause, ¶17 of the lease.

Finally, a note about the petition. The Addessis stud it with adjectives and adverbs. They "cry poor" in mentioning a "staggering loss to the Addessis." They smuggle in generous talk on the merits in the guise of an important question of practice.

None of this can pass muster as reason or authority.

Conclusion

The petition presents no question of federal practice—much less an important one—for review. It should be denied.

Respectfully submitted,

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